

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

ANTHONY C. FLOWERS

§

VS.

§

CIVIL ACTION NO. 1:08cv653

HARLEY LAPPIN

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Anthony C. Flowers, an inmate confined at the United States Penitentiary at Jonesville, Virginia, proceeding *pro se*, filed the above-styled civil rights lawsuit.

The court previously referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation recommending this lawsuit be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). The magistrate judge's recommendation was based on his conclusion that as plaintiff had previously had three lawsuits dismissed as frivolous and for failure to state a claim and had not demonstrated he was in imminent danger of serious physical harm on the date he filed his complaint, he could not proceed with this lawsuit on an *in forma pauperis* basis.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

In his objections, plaintiff states he was in imminent danger of serious physical injury on the date he filed his complaint because at that time officials at the United States Penitentiary in Atwater, California, had placed him in a cell with organized gang members. However, even if it is assumed plaintiff's allegations are sufficient to demonstrate he was in imminent danger of serious physical harm, his allegations are not sufficient to enable him to avoid the bar imposed by Section 1915(g) because there is not a sufficient nexus between the imminent danger he alleges and the legal claims asserted in his complaint. *Pettus v. Morgenthau*, 554 F.3d 292, 297 (2<sup>nd</sup> Cir.

2009). In his complaint, plaintiff complains of events which occurred while he was at the United States Penitentiary at Beaumont, Texas. As plaintiff's allegations of imminent danger are based on events which occurred at the Atwater facility, his allegations of imminent danger are not "fairly traceable to a violations of law alleged in the complaint." *Id.* As a result, his allegations of imminent danger are insufficient to permit him to avoid the bar imposed by Section 1915(g) and proceed with this lawsuit on an *in forma pauperis* basis.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing this lawsuit.

So **ORDERED** and **SIGNED** this **2** day of **March, 2010**.



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Ron Clark, United States District Judge